

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

MAY - 4 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of) MM Docket No. 93-54
)
GAF BROADCASTING COMPANY, INC.) File No. BRH-910201WL
)
 For Renewal of License of Station)
 WNCN(FM), New York, New York)
 To: The Commission

MASS MEDIA BUREAU'S COMMENTS ON
JOINT REQUEST FOR APPROVAL OF AGREEMENT

1. On March 29, 1994, GAF Broadcasting Company, Inc. ("GAF"), licensee of Station WNCN(FM), New York, New York,¹ and Listeners' Guild, Inc. ("Guild"), filed a Joint Request for Approval of Agreement for Dismissal of Court Appeals and Pleadings Before the Commission ("Joint Request"). The Mass Media Bureau submits the following comments.

2. The Joint Request is accompanied by a Settlement Agreement which contemplates the dismissal of *all* of Guild's petitions, motions, applications for review, appeals, and/or other filings involving (a) the above-captioned docketed proceeding; (b) applications for consent to the transfer of control of GAF (File Nos. BTCH-880322GF and BTCH-880322GG); and (c) WNCN(FM)'s Equal Employment Opportunity ("EEO") record. In

¹ Although the station's call sign was recently changed to WAXQ(FM), the Bureau will herein continue to refer to the facility as WNCN(FM) in order to avoid any potential confusion.

consideration for the dismissal of Guild's filings, GAF proposes to pay Guild the sum of \$110,000 or such lesser amount as may be approved by the Commission. The Settlement Agreement also contemplates, inter alia, that: GAF shall grant to Guild a limited license to use GAF's WNCN Listeners' Club Mailing List; neither Guild nor its Officers or Executive Committee members shall file, or join, cooperate with or instigate any third party to file, an application for the WNCN(FM) frequency through June 1, 1998; and Guild shall not employ David M. Rice, Esq. ("Rice"), or any law firm with which he is affiliated, to represent Guild in connection with the filing of any petitions, comments, or other pleadings adverse to GAF or to WNCN(FM) in an adjudicatory proceeding at the FCC commenced before June 1, 1998.

3. Guild represents that it has incurred legitimate and prudent expenses totalling more than twice the proposed settlement amount. In support, there is attached to the Joint Request a declaration by Rice who provides a narrative description of the legal services that he performed during the last six years on behalf of Guild in this and the other referenced proceedings. Rice states that the services he rendered total \$279,725. Rice also provides a further declaration² in which he avers that he is not, and never has been, an officer, director, or principal of Guild. Rice also states that the sum of the amounts that Guild has paid to Rice and which Guild owes to Rice for his legal services exceeds the amount that GAF proposes to pay Guild pursuant to the Settlement Agreement.

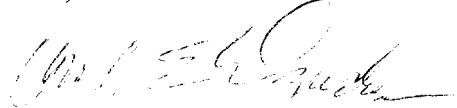
4. The Bureau submits that the Joint Request satisfies the requirements of § 73.3588 of the Commission's Rules. Specifically, a copy of the Settlement Agreement and supporting

² The supplemental materials were filed on April 29, 1994.

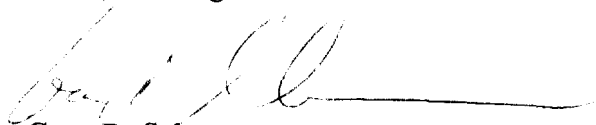
declarations have been timely filed, and the parties have established that the amount of money that Guild will receive in consideration for the dismissal of all of its filings does not exceed Guild's legitimate and prudent expenses.

5. Accordingly, the Joint Request should be granted, the settlement agreement should be approved, and Guild's filings involving the matters discussed in ¶ 2 above should be dismissed with prejudice.³

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dziedzic
Chief, Hearing Branch



Gary P. Schonman
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

May 4, 1994

³ The Bureau notes that the dismissal of Guild's filings challenging GAF's EEO record at WNCN(FM) does *not* necessarily dispose of the issues raised by Guild. The Commission is required to independently address and resolve any substantial and material questions of fact that might exist involving GAF's qualifications and its compliance with the Commission's rules. See, e.g., Booth American Company, 58 FCC 2d 553, 554 (1976).

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 4th day of May 1994, sent by regular First Class United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Joint Request for Approval of Agreement" to:

David M. Rice, Esq.
One Old Country Road
Suite 410
Carle Place, New York 11514

Christopher G. Wood, Esq.
Fleischman & Walsh
1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036

David Honig, Esq.
1800 N.W. 187th Street
Miami, Florida 33056


Michelle C. Mebane